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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

MOBILEMEDIA CORPORATION

Applicant for Authorizations
and Licenses of Certain Stations
in Various Services

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WT Docket No. 97-115

To: The Commission

REQUEST FOR CLARIFICATION

MobileMedia Corporation and its licensee subsidiaries, debtors-in-possession (collectively "MobileMedia"), by their attorneys, respectfully request that the Commission clarify its *Reconsideration Order* in this proceeding¹ to make clear that the scope of paragraph 17 of the *Stay Order*,² like the scope of paragraph 18, is limited to the four individuals identified in the *Reconsideration Order* as suspected wrongdoers.

PROCEDURAL BACKGROUND

On June 6, 1997, the Commission released its *Stay Order*, suspending the MobileMedia hearing for ten months to allow the Company to effect a transfer of control that conforms with

¹ *MobileMedia Corporation*, FCC 97-284, released August 8, 1997 ("*Reconsideration Order*").

² *MobileMedia Corporation*, FCC 97-197, released June 6, 1997 ("*Stay Order*").

the requirements of the *Second Thursday* policy.³ As directed by the *Stay Order*, MobileMedia has filed monthly status reports with the Commission, which show the progress the Company has made toward developing a *Second Thursday* resolution.

Paragraphs 17 and 18 of the *Stay Order* specified restrictions concerning “potential wrongdoers” and imposed certain related obligations on MobileMedia. In paragraph 17, the Commission said that it would require full *Second Thursday* compliance with respect to “all potential wrongdoers,” which it defined as “all former and current officers, directors, and senior managers.”⁴ It went on to say that it would scrutinize MobileMedia’s *Second Thursday* showing to be sure that none of the current officers, directors and senior managers had “benefited from sale of their stock in the interim” and that the “former and current officers, directors and senior managers will not receive compensation for their equity interests and will have no role in the future operation and management of the company.”⁵ To ensure that all “potential wrongdoers” were identified, the Commission in paragraph 18 instructed the Wireless Telecommunications Bureau (“WTB”) to prepare and distribute to all Commission Bureaus and Offices a list of all current and former MobileMedia officers, directors and senior managers. The Commission further directed that “any radio applications in which these former or current officers, directors or senior managers have attributable interests shall not be granted without resolution of [the hearing issues] as it pertains to that individual.”⁶

³ *Second Thursday Corp.*, 22 FCC 2d 515, *reconsideration granted*, 25 FCC 2d 112 (1970).

⁴ *Stay Order* at ¶ 17 (emphasis in original).

⁵ *Id.*

⁶ *Id.* at ¶ 18.

Several entities and individuals petitioned the Commission for reconsideration or clarification of the *Stay Order*.⁷ The petitions sought various forms of relief, including a request by Western Wireless, Inc. for changes that would allow its applications to be processed, a request by Hellman & Friedman Capital Partners II, L.P. that four of its principals be ruled qualified to hold Commission authorizations, and petitions by three current MobileMedia officers (Mark L. Witsaman, Debra P. Hilson and Santo J. Pittsman) seeking relief from the provisions of both paragraph 17 and paragraph 18 of the *Stay Order*. As note 1 of the *Reconsideration Order* recites, Mr. Witsaman and Ms. Hilson specifically referenced both paragraphs 17 and 18 in the captions of their motions.

Responding to these petitions, the Commission in its *Reconsideration Order* reduced the WTB's list of 43 "potential wrongdoers" to four persons.⁸ In doing so, the Commission specifically stated that it had "reexamined the information before us at the time of designation and conclude that paragraph 18 was overly broad in scope and that the allegations against MobileMedia are sufficient to raise questions only as to the qualifications of four individuals."⁹

⁷ See *Reconsideration Order* at ¶ 5.

⁸ *Reconsideration Order* at ¶10. The Commission identified the four as: Gene P. Belardi, former Secretary and Regulatory Counsel; Kenneth R. McVay, former Secretary, Vice President, and General Counsel; John M. Kealey, former Director, President, and Chief Operating Officer; and Gregory M. Rorke, former Director and Chief Executive Officer. *Id.* at ¶ 8.

⁹ *Id.* The Commission held that certain other employees who may have had "general knowledge of the inaccurate filings" should be excluded from the scope of paragraph 18 since there was no evidence "that they were participants in any deceptive practices, that they approved the deception, or that their activities otherwise raise a substantial and material question concerning their qualifications to be a licensee." *Id.* at ¶ 9. The Commission also cleared five persons who did not join MobileMedia until after the wrongdoing occurred, stating that "only individuals who were associated with MobileMedia during the time period relevant to this proceeding" could have had "involvement in MobileMedia's misconduct." *Id.* at ¶ 6.

Accordingly, the Commission determined that the former and current officers, directors and senior managers of the Company (other than the named four) should be “excluded from the scope of paragraph 18” and may become Commission licensees if otherwise qualified.¹⁰ While the *Reconsideration Order* thus relieved these persons from the restrictions imposed by paragraph 18 of the *Stay Order*, it did not explicitly remove the corresponding restrictions imposed by paragraph 17, even though it did so *implicitly* in two respects: It determined that the allegations against these individuals are not “sufficient to raise questions” about their qualifications,¹¹ and it dismissed as moot (to the extent not already granted) petitions by Witsaman, Hilson and Pittsman that expressly sought relief from paragraph 17.¹²

REQUESTED CLARIFICATION

MobileMedia seeks clarification that the scope of paragraph 17 of the *Stay Order*, like the scope of paragraph 18, is limited to the four individuals identified in the *Reconsideration Order* as suspected wrongdoers. This clarification would facilitate MobileMedia’s *Second Thursday* efforts by assuring prospective acquirers that key current senior employees, none of whom are charged with wrongdoing and all of whom add significant value to the Company, can be retained in a sale or a reorganization. It would also provide assurances to those key senior employees that would assist the Company in retaining their services during the interim period of operation in bankruptcy. The requested clarification is compelled by the Commission’s own conclusions in the *Reconsideration Order* and is fully consistent with *Second Thursday* precedent.

¹⁰ *Id.* at ¶ 10.

¹¹ *Id.* at ¶ 8.

¹² *Id.* at ¶ 12.

ARGUMENT

Under *Second Thursday* and cases applying the *Second Thursday* policy, the focus of the Commission is on “alleged” or “suspected” wrongdoers; a bankrupt licensee must demonstrate that such persons would neither benefit financially in a bankruptcy sale or reorganization nor have any role in the future operation and management of the new licensee.¹³ We are aware of no case in which the Commission has required a *Second Thursday* showing as to persons not suspected of wrongdoing. By virtue of the *Reconsideration Order*, the list of alleged or suspected wrongdoers in this case has been reduced – quite correctly – to four named individuals. Having reexamined the record, the Commission has specifically determined that the allegations “are sufficient to raise questions only as to the qualifications” of the four named individuals,¹⁴ and that the persons now “excluded from the scope of paragraph 18” (some 39 individuals, most of whom are no longer connected with MobileMedia) are qualified to become licensees.¹⁵

Because the Commission has expressly determined that there is no substantial and material question concerning the qualifications of those 39 individuals, no basis remains for continuing to subject those persons to the strictures of paragraph 17. Indeed, as noted above, *Second Thursday* does not require the kinds of showings prescribed in paragraph 17 for individuals whose qualifications are not suspect. Moreover, as a matter of simple fairness and due process, those who remain employed by MobileMedia should not face a cloud on their continued employment or scrutiny in connection with the company’s *Second Thursday* showing

¹³ See, e.g., *Second Thursday Corp.*, *supra* at 520.

¹⁴ *Reconsideration Order* at ¶ 8.

¹⁵ *Id.* at ¶ 10.

when the Commission has found that there is no evidence sufficient to raise a substantial and material question about their role.

Absent the requested clarification, a literal reading of the *Reconsideration Order* would produce anomalies. Although the individuals removed from the WTB's list have been declared qualified to *be* Commission licensees, they would be unqualified (without some further showing) to be *employed by* this Commission licensee or its *Second Thursday* successor. Hence, *Second Thursday* showings would be required under paragraph 17 for persons whom the Commission has found no basis to restrict under paragraph 18. That bizarre result would be totally at odds with the underlying premise and intent of the *Reconsideration Order*. The only logical and legally tenable reading of the *Reconsideration Order* is that the findings made in addressing paragraph 18 of the *Stay Order* apply equally to paragraph 17, and therefore that all persons removed from the scope of paragraph 18 are likewise removed from the scope of paragraph 17. Indeed, in dismissing the Witsaman, Hilson and Pittsman petitions as moot (and otherwise granted), the Commission has plainly indicated that paragraph 17 of the *Stay Order* no longer applies, for those petitions expressly sought relief from paragraph 17 and thus would not be moot if the *Reconsideration Order* left the petitioners still subject to paragraph 17.

CONCLUSION

Consistent with the *Second Thursday* policy and the conclusions reached by the Commission in the *Reconsideration Order*, MobileMedia respectfully requests that the Commission clarify that the *Reconsideration Order* applies equally to paragraphs 17 and 18 of the *Stay Order*, and that paragraph 17, like paragraph 18, is now limited to the four identified suspected wrongdoers.

Respectfully submitted,

MOBILEMEDIA CORPORATION

By: _____

A handwritten signature in black ink, appearing to read 'Richard E. Wiley', is written over a horizontal line.

Richard E. Wiley

Robert L. Pettit

Nathaniel F. Emmons

Nancy J. Victory

Richard H. Gordin

Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

(202) 429-7000

September 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 1997, I caused copies of the foregoing "Request for Clarification" to be delivered via first-class mail to the following:

The Honorable Reed E. Hundt*
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong*
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

The Honorable Susan Ness*
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

The Honorable James H. Quello*
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

The Honorable Joseph Chachkin*
Federal Communications Commission
2000 L Street, N.W.
Second Floor
Washington, D.C. 20554

William E. Kennard, Esq.*
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

Daniel B. Phythyon*
Acting Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen*
Deputy Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

* Hand Delivery

Gary P. Schonman*
D. Anthony Mastando
Enforcement Division
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 8308
Washington, D.C. 20554

John Harwood
William Richardson
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(Attorneys for the Chase Manhattan Bank, as
agent for secured lenders of MobileMedia
Corporation)

Steven A. Lerman
Dennis P. Corbett
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
(Attorneys for Hellman & Friedman Capital
Partners, II, L.P.)

David S. Kurtz
Jones, Day, Reavis & Pogue
77 West Wacker
Chicago, IL 60601-1692
(Attorneys for the Unsecured Creditors)

Alan Y. Naftalin
Arthur B. Goodkind
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Attorneys for MobileMedia Corporation)

Raymond G. Bender, Jr.
Michael D. Hayes
Thomas J. Hutton
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802
(Attorneys for David A. Bayer)

Phillip L. Spector
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
(Attorneys for the Unsecured Creditors)

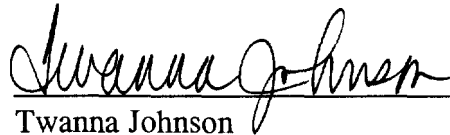
Louis Gurman
Kimberly D. Wheeler
Gurman, Blask & Freedman, Chartered
1400 16th Street, N.W., Suite 500
Washington, D.C. 20036
(Attorneys for Western Wireless Corporation)

David E. Sellinger
Ralph L. Casale
Tucker, Flyer & Lewis
1615 L Street, N.W., Suite 400
Washington, D.C. 20036
(Attorneys for Santo J. Pittsman)

Carl W. Northrop
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
(Attorneys for Triad Cellular Corporation)

W. Neil Eggleston
Evan J. Werbel
Howrey & Simon
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Attorneys for Debra P. Hilson and Mark L. Witsaman)

David G. Richards
BellSouth Corporation
Legal Department, Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036
(Attorney for BellSouth Corporation)


Twanna Johnson